

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

**MEMORANDUM OPINION
AND ORDER**

Crim. No. 06-211 (MJD)

Kevin Joseph Fenner,

Defendant.

Jeffrey Paulsen, Assistant United States Attorney, Counsel for Plaintiff.

MiAngel Cody, The Decarceration Collective Law Office, Counsel for Defendant.

This matter is before the Court on Defendant's Motion for Sentence Reduction pursuant to 18 U.S.C. § 3582(c) and Section 404 of the First Step Act. (Doc. No. 339.) The parties agree that Defendant is eligible for relief under the First Step Act and have filed a stipulation as to the agreed upon sentencing range. (Doc. No. 344.)

I. Background

On January 11, 2007 a jury returned verdicts of guilty on Counts 1, 2, 3 and 7 of the Indictment which charged Defendant with conspiracy to distribute

fentanyl and crack cocaine, distribution of crack cocaine, distribution of fentanyl and possession with intent to distribute crack cocaine. (Doc. No. 167.) On December 9, 2008, Defendant was sentenced to life imprisonment on Counts 1 and 2, and 360 months on Counts 3 and 7, to be served concurrently. Defendant was also sentenced to a term of supervised release of eight years on Counts 1 and 2, and six years on Counts 3 and 7, to be served concurrently.

II. Motion to Reduce Sentence

Pursuant to Section 404 of the First Step Act “[a] court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if section 2 and 3 of the Fair Sentencing Act of 2010 [] were in effect at the time the covered offense was committed.” Pub. L. No. 115-391, 132 Stat. 5194 (2018). A covered offense is defined as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 [] that was committed before August 3, 2010.” Id. The First Step Act is limited to those otherwise eligible defendants whose sentence was not previously imposed or reduced in accordance with sections 2 or

3 of the Fair Sentencing Act of 2010 or if a previous motion to reduce under the First Step Act was denied. Id.

The Fair Sentencing Act of 2010 (“FSA”) reduced the mandatory minimum penalties for offenses involving cocaine base by raising the drug quantity thresholds required to trigger a mandatory minimum term of imprisonment.

In this case, Defendant was held responsible for approximately 61.7 grams of cocaine base, eight grams of fentanyl and 63 grams of powder cocaine. In addition, the government filed a sentencing enhancement pursuant to 21 U.S.C. 851 which subjected Defendant to a mandatory life sentence.

Applying the provisions of the FSA, the parties agree that Defendant is eligible for a sentence reduction pursuant to Section 404 of the First Step Act. Further, the parties have agreed to recommend the Court impose a sentence between 210 to 262 months.

Once the Court determines whether a defendant is eligible for a sentence reduction under the First Step Act, the Court must, in its discretion, determine whether to grant a reduction. United States v. McDonald, 944 F.3d 769, 772 (8th Cir. 2019). The Court will grant the motion, as Defendant is no longer subject to a mandatory life sentence.

The Eighth Circuit has held that the First Step Act does not require the Court to hold a hearing when considering § 404 motions. McDonald, 944 F.3d at 772. The Court has before it a sufficient record to impose sentence in this case without a hearing. Based on that record, the parties' Joint Statement for a Reduced Sentence and Defendant's positive record while in prison, the Court finds that a sentence of 210 months is an appropriate sentence.

IT IS HEREBY ORDERED that:

1. Defendant's Motion to Reduce Sentence [Doc. No. 339] is **GRANTED**;
2. Defendant's sentence of imprisonment as to Counts 1, 2, 3 and 7 is reduced to 210 months on all counts, to be served concurrently, and
3. All other terms and conditions of this Court's original sentence shall remain in full force and effect.

Dated: June 8, 2020

s/ Michael J. Davis

Michael J. Davis

United States District Court